

BILL LOCKYER, Attorney General
of the State of California
ADRIAN K. PANTON, State Bar No. 64459
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-6593
Facsimile: (213) 897-9395

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-1966

CARL W. CACCONIE
6465 E. Liberty
Fresno, CA 92727

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Respiratory Care Practitioner License No. 21206

Respondent.

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Respiratory Care Board (Board), Department of Consumer Affairs, State of California, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. Stephanie Nunez (Complainant) is the Executive Officer of the Respiratory Care Board of California. Complainant brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Adrian K. Pantan, Deputy Attorney General.

2. Respondent Carl W. Cacconie (Respondent) is represented in this proceeding by attorney Ronald E. Kaldor, whose address is 455 Capitol Mall, Suite 410 Sacramento, California 95814.

3. On or about January 6, 2000, the Respiratory Care Board of California issued Respiratory Care Practitioner License No. 21206 to Respondent. The license was in full force and effect at all times relevant to the charges brought in Accusation No. R-1966 and will expire on March 31, 2007, unless renewed.

JURISDICTION

4. Accusation No. R-1966 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 10, 2005. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. R-1966 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. R-1966. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. R-1966.

9. Respondent agrees that his Respiratory Care Practitioner License is subject

1 to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
2 Disciplinary Order below.

3 CONTINGENCY

4 10. The parties understand and agree that facsimile copies of this Stipulated
5 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
6 force and effect as the originals.

7 11. In consideration of the foregoing admissions and stipulations, the parties
8 agree that the Board may, without further notice or formal proceeding, issue and enter the
9 following Disciplinary Order:

10 DISCIPLINARY ORDER

11 IT IS HEREBY ORDERED that Respiratory Care Practitioner License No. 21206
12 issued to Respondent Carl W. Cacconie is revoked. However, the revocation is stayed and
13 Respondent is placed on probation for two (2) years on the following terms and conditions.

14 1. PSYCHOLOGICAL EVALUATION Within 60 days of the effective date
15 of this decision, and on a periodic basis thereafter as may be required or directed by the Board,
16 Respondent, at his own expense, shall have a mental health examination, including psychological
17 assessment and testing as appropriate, to determine his capacity to perform all professional duties
18 with safety to self and to the public. The examination will be performed by a licensed
19 psychiatrist or psychologist appointed by the Board. Respondent shall provide this evaluator
20 with a copy of the Board's disciplinary order prior to the evaluation. The examiner must submit a
21 written report of that assessment and recommendations to the Board. Recommendations for
22 cessation of practice for safety of patients, treatment, therapy or counseling made as a result of
23 the mental health examination will be instituted and followed by the Respondent. All costs
24 incurred for evaluation and treatment are the responsibility of the Respondent.

25 Any examination required of a Respondent whose violation(s) involves substance
26 abuse must be performed by a licensed psychiatrist or psychologist who has established expertise
27 in the field of alcohol and drug assessment, treatment, and recovery.

28 Respondent shall execute a release authorizing the evaluator to divulge the

1 aforementioned information to the Board.

2 2. DIRECT SUPERVISION During the period of probation, Respondent
3 shall be under the direct supervision of a person holding a current and valid non-restricted Board
4 license. "Under the direct supervision" means assigned to a respiratory care practitioner who is
5 on duty and immediately available in the assigned patient area. The Board shall be informed in
6 writing of and approve the level of supervision provided to the Respondent while he is
7 functioning as a licensed respiratory care practitioner. The appropriate level of supervision must
8 be approved by the Board prior to commencement of work.

9 3. SUPERVISOR QUARTERLY REPORTS Supervisor Quarterly Reports
10 of Performance are due for each year of probation and the entire length of probation from each
11 employer, as follows:

12 For the period covering January 1st through March 31st, reports are to be
13 completed and submitted between April 1st and April 7th. For the period covering April 1st
14 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For
15 the period covering July 1st through September 30th, reports are to be completed and submitted
16 between October 1st and October 7th. For the period covering October 1st through December 31st,
17 reports are to be completed and submitted between January 1st and January 7th.

18 Respondent is ultimately responsible for ensuring his employer(s) submits
19 complete and timely reports. Failure to ensure each employer submits complete and timely
20 reports shall constitute a violation of probation.

21 4. OBEY ALL LAWS Respondent shall obey all laws, whether federal,
22 state, or local. Respondent shall also obey all regulations governing the practice of respiratory
23 care in California.

24 Respondent shall notify the Board in writing within 14 days of any incident
25 resulting in his arrest, or charges filed against, or a citation issued against Respondent.

26 5. QUARTERLY REPORTS Respondent shall file quarterly reports of
27 compliance under penalty of perjury, on forms to be provided to the probation monitor assigned
28 by the Board. Omission or falsification in any manner of any information on these reports shall

1 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
2 to revoke probation against Respondent's respiratory care practitioner license.

3 Quarterly report forms will be provided by the Board. Respondent is responsible
4 for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each
5 year of probation and the entire length of probation as follows:

6 For the period covering January 1st through March 31st, reports are to be
7 completed and submitted between April 1st and April 7th. For the period covering April 1st
8 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For
9 the period covering July 1st through September 30th, reports are to be completed and submitted
10 between October 1st and October 7th. For the period covering October 1st through December 31st,
11 reports are to be completed and submitted between January 1st and January 7th.

12 Failure to submit complete and timely reports shall constitute a violation of
13 probation.

14 6. PROBATION MONITORING PROGRAM Respondent shall comply
15 with requirements of the Board appointed probation monitoring program, and shall, upon
16 reasonable request, report to or appear to a local venue as directed.

17 Respondent shall claim all certified mail issued by the Board, respond to all
18 notices of reasonable requests timely, and submit Annual Reports, Identification Update reports
19 or other reports similar in nature, as requested and directed by the Board or its representative.

20 Respondent is encouraged to contact the Board's Probation Program at any time
21 he has a question or concern regarding his terms and conditions of probation.

22 Failure to appear for any scheduled meeting or examination, or cooperate with the
23 requirements of the program, including timely submission of requested information, shall
24 constitute a violation of probation and will result in the filing of an accusation and/or a petition to
25 revoke probation against Respondent's respiratory care practitioner license.

26 7. PROBATION MONITORING COSTS All costs incurred for probation
27 monitoring during the entire probation shall be paid by the Respondent. The monthly cost may
28 be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms

1 and conditions may also cause this amount to be increased.

2 All payments for costs are to be sent directly to the Respiratory Care Board and
3 must be received by the date(s) specified. (Periods of tolling will not toll the probation
4 monitoring costs incurred.)

5 If Respondent is unable to submit costs for any month, he shall be required instead
6 to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able
7 to submit the costs including payment amount(s). Supporting documentation and evidence of
8 why the Respondent is unable to make such payment(s) must accompany this submission.

9 Respondent understands that failure to submit costs timely is a violation of
10 probation and submission of evidence demonstrating financial hardship does not preclude the
11 Board from pursuing further disciplinary action. However, Respondent understands providing
12 evidence and supporting documentation of financial hardship may delay further disciplinary
13 action.

14 In addition to any other disciplinary action taken by the Board, an unrestricted
15 license will not be issued at the end of the probationary period and the respiratory care
16 practitioner license will not be renewed, until such time all probation monitoring costs have been
17 paid.

18 The filing of bankruptcy by Respondent shall not relieve the Respondent of his
19 responsibility to reimburse the Board for costs incurred.

20 8. EMPLOYMENT REQUIREMENT Respondent shall be employed a
21 minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his
22 probation period.

23 Respondent may substitute successful completion of a minimum of thirty (30)
24 additional continuing education hours, beyond that which is required for license renewal, for
25 each 8 months of employment required. Respondent shall submit proof to the Board of
26 successful completion of all continuing education requirements. Respondent is responsible for
27 paying all costs associated with fulfilling this term and condition of probation.

28 9. NOTICE TO EMPLOYER Respondent shall be required to inform his

1 employer, and each subsequent employer during the probation period, of the discipline imposed
2 by this decision by providing his supervisor and director and all subsequent supervisors and
3 directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in
4 this matter prior to the beginning of or returning to employment or within 14 days from each
5 change in a supervisor or director.

6 If Respondent is employed by or through a registry [and is not restricted from
7 working for a registry], Respondent shall make each hospital or establishment to which he is sent
8 aware of the discipline imposed by this decision by providing his direct supervisor and
9 administrator at each hospital or establishment with a copy of this decision, and the Statement(s)
10 of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be
11 done each time there is a change in supervisors or administrators.

12 The employer will then inform the Board, in writing, that he is aware of the
13 discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting
14 the Board to obtain additional forms, if needed. All reports completed by the employer must be
15 submitted from the employer directly to the Board.

16 Respondent shall execute a release authorizing the Board or any of its
17 representatives to review and obtain copies of all employment records and discuss and inquire of
18 the probationary status with any of Respondent's supervisors or directors.

19 10. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall
20 notify the Board, and appointed probation monitor, in writing, of any and all changes of
21 employment, location, and address within 14 days of such change. This includes, but is not
22 limited to, applying for employment, termination or resignation from employment, change in
23 employment status, change in supervisors, administrators or directors.

24 Respondent shall also notify his probation monitor AND the Board IN WRITING
25 of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for
26 mailing purposes, however the Respondent must also provide his physical residence address as
27 well.

28 11. COST RECOVERY Respondent shall pay to the Board a sum not to

1 exceed the costs of the investigation and prosecution of this case. That sum shall be \$3,000.00
2 and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months
3 from the effective date of this decision. Cost recovery will not be tolled.

4 If Respondent is unable to submit costs timely, he shall be required instead to
5 submit an explanation of why he is unable to submit these costs in part or in entirety, and the
6 date(s) he will be able to submit the costs including payment amount(s). Supporting
7 documentation and evidence of why the Respondent is unable to make such payment(s) must
8 accompany this submission.

9 Respondent understands that failure to submit costs timely is a violation of
10 probation, and submission of evidence demonstrating financial hardship does not preclude the
11 Board from pursuing further disciplinary action. However, Respondent understands that
12 providing evidence and supporting documentation of financial hardship may delay further
13 disciplinary action.

14 Consideration to financial hardship will not be given should Respondent violate
15 this term and condition, unless an unexpected AND unavoidable hardship is established from the
16 date of this order to the date payment(s) is due.

17 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his
18 responsibility to reimburse the Board for these costs.

19 12. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods
20 of residency or practice outside California, whether the periods of residency or practice are
21 temporary or permanent, will toll the probation period, but will not toll the cost recovery
22 requirement, nor the probation monitoring costs incurred. Travel out of California for more than
23 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the
24 Board, in writing, within 14 days, upon his return to California and prior to the commencement
25 of any employment where representation as a respiratory care practitioner is/was provided.

26 13. VALID LICENSE STATUS Respondent shall maintain a current, active
27 and valid license for the length of the probation period. Failure to pay all fees and meet
28 Continuing Education requirements prior to his license expiration date shall constitute a violation

of probation.

14. VIOLATION OF PROBATION If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

15. COMPLETION OF PROBATION Upon successful completion of probation, Respondent's license shall be fully restored.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ronald E. Kaldor. I understand the stipulation and the effect it will have on my Respiratory Care Practitioner License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board of California.

DATED: September 15, 2006

Original signed by:
CARL W. CACCONIE
Respondent

I have read and fully discussed with Respondent Carl W. Cacconie the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: September 17, 2006

Original signed by:
RONALD E. KALDOR
Attorney for Respondent

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board of California.

DATED: September 18, 2006

BILL LOCKYER, Attorney General
of the State of California

Original signed by:
ADRIAN K. PANTON
Deputy Attorney General

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-1966

CARL W. CACCONIE
6465 E. Liberty
Fresno, CA 92727

Respiratory Care Practitioner License No. 21206

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on December 18, 2006.

It is so ORDERED December 6, 2006.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA